

*United States Court of Appeals
for the Second Circuit*



**BRIEF FOR
APPELLANT**

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76-1129

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

ANGELO RICCO, et al.,

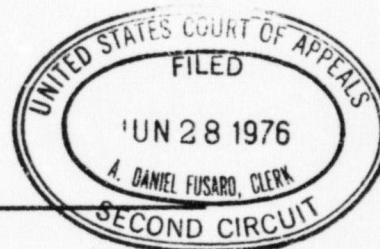
Appellant.

*On Appeal from a Judgment of Conviction in the
United States District Court for the Southern
District of New York*

APPELLANT'S BRIEF

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UNITED STATES OF AMERICA,

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Appellant.

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STATEMENT OF ISSUES

1.

Whether the failure to grant Angelo Ricco a severence on the grounds of antagonistic defenses denied him a fair trial?

2.

Whether multiple conspiracies were proved at trial?

3.

Whether the virtually exclusive use by the United States Attorney of leading questions of the witnesses before the grand jury invalidates the indictment?

4.

Whether the prosecution's summation was improper?

PRELIMINARY STATEMENT

This is an appeal from a judgment of conviction in the United States District Court for the Southern District of New York, Hon. Morris E. Lasker, District Judge.

Appellant Angelo Ricco was found guilty, after a trial by jury, of one count of conspiracy to violate the narcotics laws and five counts of violating Title 21, U.S.C. §812, 841(a)(1) and 841(b)(1)(A). On March 5, 1976, appellant was sentenced to five years imprisonment on each count, said counts to run concurrently.

STATEMENT OF FACTS

Government's Case

Albert Rossi first met with Anthony Ricco (Tony Bragiole) and his nephew, Angelo Ricco, in December 1970 (66).* In February or March, 1971, Rossi borrowed \$5,000 from Bragiole to buy drugs. Rossi was unable to pay the money back, so in October 1971, Rossi had a meeting with Bragiole and Angelo Ricco to find a way to pay off the debt (68-71). At this meeting, it was agreed that Bragiole and Ricco would supply narcotics to Rossi on consignment to work off the debt (72).

At this time, Rossi formed a partnership in the narcotics business with Fred Blase, a fellow employee. Shortly after forming this partnership, Rossi again met with Bragiole and Ricco and arranged for receipt of an ounce of heroin (75-76). A few days after the meeting, the ounce of heroin was delivered to Rossi in the men's room of a bar (77). Rossi and Blase cut this heroin and began to seek buyers (83). Rossi made a sale of an ounce to George Carrado. Rossi paid Angelo Ricco for the ounce

*References are to the typewritten minutes of trial.

and split the remaining money with Blase (85). The above procedure was repeated three or four more times (89).

During the period December 1971 to July 1972, Rossi and Blase continued to obtain narcotics from Bragiole and Angelo Ricco (97-98). Rossi also took on two new partners, Peter and Anthony Crescenti (96). Rossi continued to get drugs from Bragiole and Anthony Ricco. At their meetings, Charles Indivigliata was present, and Indivigliata would deliver heroin to Rossi, who would sell it and pay Bragiole or Angelo Ricco (102, 104, 112-114).

In April 1972, Rossi, Blase, the Crescentis, and Carrado went to Florida (117). In July 1972, Rossi, Blase, and Robert Browning went to Puerto Rico, where Browning introduced James Rizzieri to Rossi. Rossi and Rizzieri agreed to deal with each other in the future (124, 128, 129).

After returning to New York, Rossi again met with Bragiole and Angelo Ricco. Rossi still owed them money. Rossi informed them that he had met Rizzieri who could move drugs (134). It was agreed that Bragiole would continue to supply Rossi with narcotics, but in larger amounts (134). Rossi then met with Rizzieri. They agreed to become partners and to get rid of Blase (142). To show his good faith, Rossi told Rizzieri who his source of drugs was (142).

In August 1972, Rossi again met with Bragiole, Ricco, and Indivigliata (143-144). Arrangements for a delivery were made and "Tony" (not Bragiole) made a delivery of two ounces (145).

Rizzieri and Rossi diluted this into an eighth of a kilo and sold it (147-148).

Over the next several months, August to December, 1972, Rossi picked up large quantities of heroin from Bragiole or Angelo Ricco and resold it (149, 154). This occurred about forty or fifty times. The largest transaction involved two kilos of heroin (157). During the same time period, Angelo Ricco met with Rossi and Rizzieri and gave them a kilo of cocaine (163-170). When Rossi tried to sell this cocaine, the buyer, Menstasti, told them that the cocaine was no good and that they had paid too much for it (171). Rossi met with Angelo Ricco to discuss the return of this cocaine. Indivigliata was present and he said he would lower the purchase price but he wouldn't take back the cocaine (172). Later in August 1972, Rossi got other cocaine samples from Indivigliata but no transactions were completed (174).

In November 1972, Rossi met with John DiSalvo who said he had good buyers (175-176). Rossi made up an eighth of a kilo and sold it to DiSalvo (177). Rossi also sold to Pete "The Weep" (179).

During their contacts, Rossi and Angelo Ricco became very close. In fact, Rossi became the Godfather of Angelo Ricco's child (181-182). At this child's Christening party, Bragiole, Angelo Ricco, Rossi and Rizzieri spoke about payment of monies owed for drugs (190).

From September to December 1972, Rossi met with Bragioli several times. Bragiole told Rossi that he had goods

coming in from France (197). Subsequently, Rossi got two kilos of pure heroin from Bragiole and Angelo Ricco (203-209). These two kilos were sold by Rossi, but the buyer returned them because they were not pure (210). Rossi went to Bragiole and Angelo Ricco and told them what had happened. Bragiole told Angelo Ricco to "handle it." Angelo told Rossi that since he took the goods he was responsible for payment. Rossi kept the drugs and owed t . . . ey (212).

Early in 1973, Rossi went to Florida. At this time, Rossi still owed \$26,000 for the two kilos (214). When Rossi got back to New York he discovered that Rizzieri had diluted the remainder of the two kilos of heroin (210). Rossi pulled a gun on Rizzieri (219). These two kilos were the last which Rossi received from Bragiole or Ricco (220). However, in February 1973 Rossi paid \$13,000 to Angelo Ricco (220, 221) but Ricco still held him responsible for the remaining \$13,000 (222).

Rossi didn't see Angelo Ricco from that time until trial. He did see Bragiole several more times (223).

Rossi and Rizzieri continued in the drug business with other suppliers (223).

In 1973, Rossi met Peter Mengrone. Mengrone told Rossi that he was getting drugs from Bragiole and Angelo Ricco and that he would supply Rossi with drugs (224).

In April 1973, Rossi met with Bragiole and indicated that he might be able to arrange for a sale to Frank Matthews. Bragiole told him to get the money first. Matthews gave Rossi

some \$300,000, but could not raise the rest. Rossi intended to steal this money; however, Matthews took one of Rossi's friends hostage. Rossi returned all but \$50,000 of the \$300,000 (764-766).

In early 1974, Rossi was arrested and began to cooperate with the government.

Gary Pearson was released from prison in December 1972. In April 1973, he renewed an old relationship with John DiSalvo (953). Pearson met with DiSalvo to arrange for a sale to some people from Boston. During the preliminary negotiations, at a diner in New Jersey, DiSalvo and Pearson became suspicious of the buyers, so nothing came of this transaction (958-963).

In May 1973, Pearson again met with DiSalvo to arrange for a sale of an eighth of a kilo of heroin to Jerry Rubin (965). Pearson and DiSalvo drove to a pre-arranged location, left the car, returned to it and found a package of drugs under the seat. The next day Pearson and DiSalvo completed the sale to Rubin (965-969).

A few weeks later DiSalvo told Pearson that he had made another sale to Rubin and he, DiSalvo, gave Pearson his share of the profits (969-970).

In May or June 1973, Pearson met with Mengrone to set up a cocaine sale to Mengrone, but the transaction, which also involved Rubin, DiSalvo, and Visciglia, was abandoned when it turned out to be a circular transaction involving the same drugs (971-983).

In September 1973, Pearson was involved with Rossi in the theft of a large amount of pure cocaine. Pearson offered some of this cocaine to Angelo Ricco but nothing came of it (984-986).

In October 1973, Pearson sold to Louis Guerra some heroin he obtained from DiSalvo. Later that month Pearson was arrested and began to cooperate with the government (987-989).

Peter Mengrone worked as a bouncer at the Four Winds Bar and the Magic Carpet from October 1971 to March 1973. In September 1972, he bought the Magic Carpet. Throughout this period, Mengrone saw numerous meetings between Bragiole, Angelo Ricco, Rossi, Rizzieri, Indiviglia and John DiSalvo. Subsequently, Mengrone found out that drugs were being dealt at the Magic Carpet. He spoke to Bragiole and Angelo Ricco and told them not to deal drugs at his club. They, in turn, said that they had not been dealing drugs (1209-50). Several days later, Mengrone conveyed a message to Bragiole and Ricco that Rizzieri, who had been arrested, would do his time and that no one should worry (1252-54).

Mengrone's club was not profitable and he began to fall into debt. To extricate himself from this position, Mengrone sold the club to Bragiole. Moreover, Mengrone entered the narcotics business by trying to find customers for Bragiole's narcotics (1254-58).

In June 1973 Mengrone was involved in the circular transaction testified to previously by Pearson (1260-68).

Mengrone then spoke to James Venia who told him that he had six kilos of heroin available at \$40,000 per kilo (1268-69). Mengrone relayed this information to Bragiole and Ricco, who said they were willing to pay \$35,000 per kilo, with "no front" money (1270-72). Despite this directive, Mengrone, after stealing \$2,000, fronted the remaining money to Venia. The deal fell through and the \$33,000 was not returned. Mengrone told Bragiole and Ricco what had happened. However, Bragiole said not to worry since they knew who stole their money and if necessary they would kidnap one of the thief's children for ransom (1274-76).

In September 1973, Mengrone spoke to Frank Lucas, who wanted to buy large quantities of heroin. Mengrone spoke to Bragiole who told him that only cocaine was available. Mengrone brought Lucas a sample but nothing further came of it (1277-80). Later, Bragiole told Mengrone that heroin was available. In October 1973, Mengrone went to meet Bragiole to complete a sale to Lucas. Mengrone made contact and was given a sample of heroin by Bragiole. Bragiole told Mengrone that if Lucas liked the sample, he, Bragiole, would deal directly with Lucas. Lucas was not willing to pay the price asked so this sale also fell through (1283-84).

Mengrone then got into trouble with Lucas because of Rossi's theft of the \$30,000. Mengrone went to Bragiole to get help in getting the money back. Bragiole and Ricco agreed to help since they too were owed money by Rossi (1285-87).

In October 1973, Mengrone arranged for a sale of drugs from Bragiole to Gigi, but during the negotiations Gigi found a new source of supply and the sale did not occur (1289-1302).

Later in October 1973, Mengrone told Bragiole that he had an old customer, Eddie, who would buy heroin. Eddie was, in reality, an undercover agent. Arrangements were made, but at the last minute Bragiole changed the plans so that he would handle the sale himself (1307-14). Mengrone went to O'Donnell's apartment to wait for Bragiole. Before Bragiole came, the police arrived and arrested Mengrone (1314).

Agent Donald Ferrarone was involved in three sales (November 1972, February 1973, and March 1973) from James Rizzieri. During the negotiations for the March sale, Rizzieri told Ferrarone that his old sources had dried up but that he had a new source on Long Island (827-849). After the March sale was completed, Rizzieri was arrested. On cross-examination by Rizzieri's counsel and over the objection of appellant's counsel, Ferrarone testified that after his arrest, ^{Pete Donoran,} Rizzieri ^{Rizzieri's} ~~that Bragiole and Ricco~~ told him that ~~Bragiole and Ricco~~, among others, were ~~his~~ source of drugs (867-870).
drive

POINT I

THE FAILURE TO GRANT ANGELO RICCO A SEVERANCE, BECAUSE OF THE ANTAGONISTIC DEFENSE OF CO-DEFENDANT RIZZIERI, DENIED HIM A FAIR TRIAL.

Early in this trial, counsel for co-defendant Rizzieri informed the court that Rizzieri's defense was based upon admitting the sales involving Agent Ferrarone (751, 762-763). Counsel for Angelo Ricco requested a severance on the grounds of antagonistic defenses (752-753). The motion for a severance was denied. During his summation, counsel for Rizzieri conceded the accuracy of Agent Ferrarone's version of the alleged sales made by Rizzieri (2002-2004).

In conceding that the February and March 1973 sales took place, Rizzieri presented the jury with a defense completely antagonistic to Angelo Ricco's.

Where co-defendants present conflicting and irreconcilable defenses and there is danger that from this the jury will unjustifiably infer the guilt of other defendants, then a severance should be granted. See, De Luna v. United States, 302 F.2d 140 (5th Cir., 1962) on reh. 324 F.2d 375 (1963) (dealing with comment by a co-defendant on defendant's failure to take the stand); United States v. Johnson, 478 F.2d 1129, 1132-1133 (5th Cir., 1973). While De Luna, supra, deals with a somewhat different situation, the thrust of its logic applies here.

It must be pointed out, that it was essential to the government's case that Rizzieri's activities be linked to Bragiole and Ricco. The stated basis for the admissibility of

these subsequent sales by Rizzieri was that the government would show that Rizzieri was selling drugs obtained from the Riccos. It was, on the other hand, beneficial to Rizzieri's defense that the two sales conceded to have occurred be identified by the source of supply. To accomplish this identification, counsel for Rizzieri asked Agent Ferrarone if after his arrest ^{Onoran} ~~Rizzieri~~ identified his sources of supply. Counsel for appellant objected¹ but was overruled and Ferrarone was permitted to testify that ^{Onoran} Rizzieri told him that Bragiole and Angelo Ricco, among others, were the suppliers of the drugs involved in the sales to Ferrarone (867-868, 870). Thus, this identification of the source of drugs was beneficial to Rizzieri and most beneficial to the government. Beneficial to the government because it supplied the link to Bragiole and Ricco, which permitted the testimony of Ferrarone to be admitted. Moreover, the corroboration supplied by Ferrarone went a long way in buttressing the credibility of the other government witnesses on the issue of appellant's narcotics activities.

It is clear, that Ferrarone's testimony as to what ^{Onoran} ~~Rizzieri~~ said after his arrest would not have been admissible on the government's case. Bruton v. United States, 391 U.S. 123 (1968)

¹ Counsel objected on grounds of hearsay. Rather, the objection should have been on Bruton grounds. The statement was post-arrest and clearly not in furtherance of the conspiracy and was not admissible against appellant.

Thus, only because of the existence of Rizzieri's antagonistic defense was this most damaging testimony brought before the jury.

Counsel had made a timely motion for a severance on the appropriate grounds. When counsel for Rizzieri cross-examined Ferrarone and later in summation conceded the correctness of much of Ferrarone's testimony, the prejudice to Angelo Ricco became obvious.

In United States v. Barrera, 486 Fed. 333, 339 (2d Cir. 1973), DeLuca, a co-defendant of Barrera, rested his entire case on an insanity defense. De Luca's counsel posed certain hypothetical questions to expert witnesses which assumed the truth of some of the government's contentions about the participation of others on trial. This Court stated:

Although we consider this a close question, especially in light of De Luca's counsel's summation which conceded De Luca's participation in the conspiracy, we do not find the failure to sever to constitute grounds for reversal. In light of the trial judge's repeated instructions to the jury that the statements of De Luca's counsel were not evidence and that no inferences were to be drawn from the hypotheticals, the denial of the motion to sever was thus not an abuse of discretion. Id. at 339 (emphasis supplied)

If Barrera was close, then the denial of the severance here was clearly an abuse of discretion. Here, Rizzieri's defense damned the other defendants and permitted otherwise inadmissible evidence to go before the jury.

A trial court has a continuing duty to grant a

severance if prejudice appears from a joint trial. Schaffer v. United States, 362 U.S. 511 (1960); United States v. Deireen, 463 F.2d 1036, 1042 (10th Cir., 1972). Prejudice to Angelo Ricco from the antagonistic defense of Rizzieri was apparent. The failure to grant the severance denied Ricco his Sixth Amendment right to a fair trial.

POINT II

THOUGH THE INDICTMENT CHARGED ONE CONSPIRACY, THE PROOF ESTABLISHED MULTIPLE CONSPIRACIES. THIS VARIANCE BETWEEN INDICTMENT AND PROOF AFFECTED SUBSTANTIAL RIGHTS OF APPELLANT.

I.

In contrast to the usual narcotics conspiracy case where separate groups of importers, wholesalers, middlemen and retailers are chained together in one cooperative venture, each contributing to the success of the whole [e.g., United States v. Sperling, 506 F.2d 1323, 1340-1343 (2d Cir., 1974); United States v. Borelli, 336 F.2d 376 (2d Cir., 1964) cert. denied sub nom. Cinquegrano v. United States, 379 U.S. 960 (1965); United States v. Aqueci, 310 F.2d 817 (2d Cir., 1962); United States v. Bruno, 105 F.2d 921 (2d Cir., 1939)], the evidence in this case clearly established multiple conspiracies. The activities of Rizzieri in selling narcotics to Agent Ferrarone had nothing to do with the conspiracy involving Angelo Ricco.² In such

²The only basis for connecting Rizzieri's drugs to Angelo Ricco was the post-arrest statement made by Rizzieri to Agent Ferrarone which was brought out by Rizzieri's attorney on cross-examination of Ferrarone. This post-arrest statement should not have been admitted into evidence under Bruton v. United States, 391 U.S. 123 (1968).

circumstances, multiple conspiracies were established under Kotteakos v. United States, 328 U.S. 753 (1945). Moreover, the variance between the indictment and proof affected the substantial rights of the appellant, Angelo Ricco, since he was severely prejudiced by the introduction of damaging proof concerning the activities of Rizzieri with which Ricco was not involved.

Taking the view of the evidence most favorable to the government, United States v. McCarthy, 473 F.2d 300, 302 (2d Cir., 1972); United States v. D'Avanzo, 443 F.2d 1224, 1225 (2d Cir.), cert. denied 404 U.S. 850 (1971), the proof established separate conspiracies. United States v. Bertolotti, 529 F.2d 149 (2d Cir. 1975).

Using the standard set forth by this Court there can be no finding other than multiple conspiracies in this case.

In a "chain conspiracy" the government must show: That the success of their independent venture (adulterating and selling narcotics) was wholly dependent upon the success of the entire "chain" . . . An individual associating himself with a "chain" conspiracy knows that it has a "scope" and that for its success it requires an organization wider than may be disclosed by his personal participation. United States v. Aqueci, 310 F.2d 817, 826-827 (2d Cir., 1962), cert. denied, 372 U.S. 959 (1963).

An analysis of the facts of this case will not permit a finding that the transactions here were like that outlined in Aqueci.

Moreover, even under the "chain conspiracy" analysis

the extreme links of a conspiracy may have elements of the spoke conspiracy. In such an event, there is more than a single conspiracy unless "the evidence of the scale of the operation permitted the inference that the persons at a particular level must have known that others were performing similar roles."

United States v. Miley, No. 74-2207-10 (2d Cir., March 19, 1975) slip op. at 2389-90. United States v. Borelli, 336 F.2d 376, 383 (2d Cir. 1964), cert. denied sub nom. Cinquegrano v. United States, 379 U.S. 960 (1965).

II.

Since it is clear that a variance exists between the indictment and the evidence, multiple conspiracies having been proven, the inquiry proceeds to one of whether the variance is material -- that is, whether it affects the substantial rights of the accused. Berger v. United States, 295 U.S. 78, 82 (1935); United States v. Agueci, supra; United States v. Miley, supra.

In United States v. Berger, 73 F.2d 278, 280 (2d Cir., 1934) rev'd on other gds., 295 U.S. 78 (1935), this Court discussed what would affect substantial rights sufficiently to make the variance material and require reversal. Specifically, this Court wrote that the variance would be material where surprise hampers the presentation of the defense or where, as in the present case, "it will allow the production of evidence not competent or material to the crime he had committed."

Here, there was evidence relating to the actions of others, which could not properly be attributed to Ricco. The various drug sales and the distribution of the proceeds of these crimes were all explicitly placed before the jury. Thus, there was prejudice and appellant should be granted a new trial. United States v. Bertolotti, 529 F.2d 140 (2d Cir. 1975).

POINT III

THE COURT BELOW SHOULD HAVE GRANTED THE MOTION TO DISMISS THE INDICTMENT BECAUSE OF THE NATURE OF THE QUESTIONING OF THE WITNESSES IN THE GRAND JURY.

Early in the trial, defense counsel called to the court's attention that the United States Attorney questioned the witnesses before the Grand Jury so that the witnesses only answered "Yes" or "No". It was pointed out that this method of questioning amounted to the indictment being based upon the testimony of the prosecutor (657-659). While the court noted the significance of the issue, it did not grant the motion.

Appellant contends that the virtually exclusive use of leading questions renders the indictment invalid and that, under its supervision powers, this Court should dismiss the indictment. See, United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972).

A question is leading which puts into a witness' mouth the words that are to be echoed back, or plainly suggests the answer which the party

wished to get from him. People v. Mather, 4 Wend. N.Y. 229, 247.

A question is a leading one when it indicates to the witness the real or supposed fact which the examiner expects and desires to have confirmed by the answer . . . It may be used to prepare him to give the desired answers to the questions about to be put to him; the examiner, while he pretends ignorance and is asking for information, is in reality giving instead of receiving it. Betham, Rationale of Judicial Evidence, Browning's edition, Vol. VI, at p. 338.

See, People v. Rao (N.Y.L.J., 12/4/75; p. 11 c.5, Sup.Ct. Bx. Co.); People v. Rodriguez (N.Y.L.J., 12/1/75, p. 8, c. 3; Sup. Ct. Bx. Co.)

Here, it was the testimony of the prosecutor which secured this indictment. The mouthing of the word "yes" or "no" by the witnesses in the grand jury does not make the procedure followed appropriate. This Court should reverse the convictions and dismiss the indictment. cf. United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972).

POINT IV

OTHER ERRORS

A. The admission into evidence of Konoran Rizzieri's post-arrest statement denied appellant a fair trial.

As previously noted, counsel for co-defendant Rizzieri, brought out, on his cross-examination of Agent Ferrarone, that Onoran Rizzieri had stated that one of his sources of drugs was Bragiole and Angelo Ricco. This statement was not made in furtherance of

Donovan

the conspiracy and was made after Rizzieri was in custody. Counsel for appellant objected on hearsay grounds and the court overruled the objection. Appellant contends that this testimony was a clear violation of the principals set forth in Bruton v. United States, 391 U.S. 123 (1968). This testimony was crucial as the only link between the Rizzieri sales to Ferrarone and Bragiole and Ricco. If this Court feels that the objection on hearsay grounds does not amount to an objection sufficient to raise the issue, appellant contends that the admission into evidence of the post-arrest statement was plain error under Rule 52 of the Federal Rules of Criminal Procedure.

- B. The prosecutor, in summation, improperly vouched for his witnesses and improperly called upon the jury to convict to prevent drug trafficking.

In his summation, the prosecutor told the jury that if the government witnesses lied they would be prosecuted for perjury and that they would be considered in default in their agreement with the government and would be then prosecuted for all the crimes which were covered by the agreement to cooperate (1864-1865). Defense counsel objected to this. First, it was improper for the prosecution to comment on what would happen if its witnesses lied. There was nothing in evidence to support this line of argument and it amounted to an improper reference to matters not in evidence. See, United States v.

Bell, 506 F.2d 207 (C.A.D.C. 1974); United States v. Gonzales, 488 F.2d 833 (2d Cir. 1973).

This argument also amounted to the government's vouching for its witnesses, which is improper. See, United States v. Martinez, 487 F.2d 973 (10th Cir. 1973); United States v. Salazar, 485 F.2d 1272 (2d Cir. 1973), cert. den. 415 U.S. 985).

The government also argued to the jury that they should convict to prevent drug trafficking. This was clearly an appeal to emotion and bias,³ and should not have been permitted (1920). See, United States v. Bugros, 304 F.2d 177 (2d Cir. 1972).

The trial court tried to limit the impact of these comments by giving an instruction to the jury, informing them of the proper limits of closing arguments (1924-1925), but the effect of such curative instructions is doubtful. See, Krulewitch v. United States, 336 U.S. 440 at 453 (1949) (concurring opinion of Jackson, J.); Bruton v. United States, 391 U.S. 123 (1968); United States v. Rinaldi, 301 F.2d 576, 578 (2d Cir. 1962).

³The prosecutor also made emotional references to the nature of the narcotics business and the danger to informers. This argument was used to bolster the credibility of the government witnesses by showing how much those witnesses risked by testifying. Of course, none of these comments were based upon the evidence at trial.

POINT V

PURSUANT TO RULE 28(i) OF THE FEDERAL RULES OF APPELLATE PROCEDURE, APPELLANT INCORPORATES AND ADOPTS ALL APPLICABLE ARGUMENTS RAISED BY CO-APPELLANTS.

CONCLUSION

THE JUDGMENT OF CONVICTION SHOULD BE REVERSED AND THE INDICTMENT DISMISSED OR IN THE ALTERNATIVE APPELLANT SHOULD BE GRANTED A NEW TRIAL.

Respectfully submitted,

GOLDBERGER, FELDMAN & BREITBART
Attorneys for Appellant

J. JEFFREY WEISENFELD
(on the Brief)

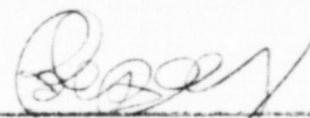
STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 28 day of June 1975 deponent served the within Brief upon: A.J. Attorney

attorney(s) for Appellee

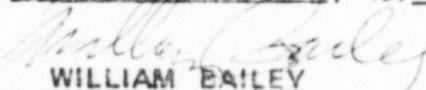
in this action, at 117 Anderson Place

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.



Robert Bailey

Sworn to before me, this 28
day of June, 1975


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978

